

No. 77-470

Supreme Court, U.S.  
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**In the Supreme Court of the United States**

**OCTOBER TERM, 1977**

**CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION No. 391,  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS  
OF AMERICA, PETITIONER**

**v.**

**PILOT FREIGHT CARRIERS, INC., AND  
NATIONAL LABOR RELATIONS BOARD**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT**

**MEMORANDUM FOR THE NATIONAL  
LABOR RELATIONS BOARD**

**WADE H. MCCREE, JR.,  
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**JOHN S. IRVING,  
General Counsel,  
National Labor Relations Board,  
Washington, D.C. 20570.**

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1. The Board, reversing the Administrative Law Judge, found that the local, line-haul, and central dispatchers at the Company's Kernersville, North Carolina terminal were "employees," rather than "supervisors,"<sup>1</sup> when the Company, just prior to a Board unit clarification proceeding<sup>2</sup> to resolve their employment

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<sup>1</sup>Supervisors, as defined in Section 2(11) of the National Labor Relations Act, 29 U.S.C. 152(11), are excluded from the coverage of the Act.

<sup>2</sup>The proceeding was instituted on petition of the Company to determine whether the dispatchers should be included in the bargaining unit with the Company's office employees (Pet. App. 37a). See 29 C.F.R. 102.60(b), 102.61(d).

status, issued new job descriptions purporting to grant them supervisory authority (Pet. App. 26a). Accordingly, the Board found that the Company violated Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), by coercively interrogating and threatening the dispatchers because of their union activities; Section 8(a)(3), 29 U.S.C. 158(a)(3), by issuing them supervisory job descriptions even though they never had, nor exercised, supervisory responsibilities; and Section 8(a)(5), 29 U.S.C. 158(a)(5), by changing their job responsibilities without consulting with the Union after a majority of the dispatchers had selected Teamsters Local 391 as their bargaining representative and while resolution of their employment status was awaiting the unit clarification proceeding<sup>3</sup> (Pet. App. 27a-28a).

2. The court of appeals denied enforcement of the Board's order, concluding that, prior to the issuance of the job descriptions, "the dispatchers involved here possessed supervisory authority requiring the use of independent judgment as defined by §2(11)" (Pet. App. 5a). Thus, the court found that the local dispatchers responsibly directed the local drivers because they had the authority "to assign local drivers to different areas and different times than those for which they had bid, decide the amount of pick-up work given to a driver, select

<sup>3</sup>Teamsters Local 391 began an organizational campaign among the Kernersville terminal office and maintenance employees in March 1973. In August 1973, the Company and the Union agreed to resolve the representation question through a card check with the Company reserving the right to litigate the status of its dispatchers before the Board in a unit clarification proceeding. On August 28, 1973, the arbitrator conducting the card check determined, *inter alia*, that 14 of the 19 dispatchers executed valid authorization cards on behalf of the Union. On September 26, 1973, six days after it filed a unit clarification petition with the Board, the Company issued the supervisory job description to its dispatchers (Pet. App. 26a-27a).

casual casual drivers,<sup>4</sup>] and generally act as the first line supervisor of the local drivers" (Pet. App. 10a). The court also found that the line-haul dispatchers responsibly directed over-the-road drivers by preventing inebriated drivers from going on the road, by insuring that the drivers were not reporting unreasonably late for duty, and by "running-around" a driver based on assessment of a driver's ability or availability<sup>5</sup> or permitting a driver to switch loads to meet a scheduled freight delivery (Pet. App. 14a-15a). Finally, the court found that the central dispatchers had authority to permit over-the-road drivers to end the work day early and to vary their routes for personal reasons (Pet. App. 16a).

Accordingly, the court held that (Pet. App. 18a):

[s]ince the dispatchers were already supervisors when the company issued the job descriptions \* \* \*, the company did not violate the Act by altering the dispatchers' duties without consulting the union and cannot be accused of attempting to deprive the dispatchers of their rights by unilaterally changing the dispatchers into "supervisors." In view of the supervisory status of the dispatchers, the company was also free to talk with them about their union activities.

3. The basic question presented is whether the Board properly concluded that the Company's dispatchers did not responsibly direct employees but exercised independent judgment only with respect to the movement of

<sup>4</sup>A "casual casual driver" is a part time local driver having no seniority with the Company who drives solely on an "as-needed" basis (Pet. App. 6a, 74a).

<sup>5</sup>A "runaround" occurs when a line-haul dispatcher assigns a load to a driver whose name is not at the top of the bid board (Pet. App. 55a-56a).

equipment and freight. The Board believes that the court of appeals should have accepted its conclusion concerning the status of the dispatchers since it has " 'warrant in the record' and a reasonable basis in law." *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U.S. 111, 131. The Board, however, did not petition for certiorari because, in its view, the difference between the Board and the court turns essentially on a differing evaluation of the facts of this particular case.<sup>6</sup> Should the Union's petition be granted, the Board will defend its order.

Respectfully submitted.

WADE H. MCCREE, JR.,  
*Solicitor General.*

JOHN S. IRVING,  
*General Counsel,*  
*National Labor Relations Board.*

DECEMBER 1977.

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<sup>6</sup>Under the *Hearst* standard, *supra*, there must be " 'warrant in the record,' " *i.e.*, an adequate factual predicate, for the agency's ultimate conclusion. The court of appeals found "no substantial evidence to rebut the testimony that indicates that the dispatchers \* \* \* possessed supervisory authority requiring the use of independent judgment as defined by §2(11)" (Pet. App. 5a).